

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RICHARD TOUMI)	
Claimant)	
VS.)	
)	Docket No. 237,798
SENNE & COMPANY, INC.)	
Respondent)	
AND)	
)	
BUILDERS' ASSOCIATION SELF-INSURERS' FUND)	
Insurance Carrier)	

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Brad E. Avery dated December 8, 1998, wherein the Administrative Law Judge denied claimant temporary total disability compensation, ordered respondent to pay medical bills pursuant to Claimant's Exhibit 1, and referred claimant for an independent medical examination pursuant to K.S.A. 44-516.

ISSUES

- (1) Whether claimant suffered accidental injury on the date alleged.
- (2) Whether claimant's accidental injury arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board makes the following findings of fact and conclusions of law:

On September 21, 1998, claimant was working at the FMC plant in Lawrence, Kansas, loading a fork truck with sump pumps and an air compressor. Claimant has no recollection of what happened next. He simply woke up on a gurney headed for an ambulance. At the time of the accident, he had been working outside for two to three hours.

Claimant was transported by ambulance to Lawrence Memorial Hospital, stayed overnight for observation and was later examined by Paul D. Morte, D.O., who examined claimant on two separate occasions. On September 24, 1998, Dr. Morte returned claimant to restricted duty work, cautioning that he avoid dangerous equipment. He speculated that claimant may have had a seizure, but there is no indication, within a reasonable degree of medical certainty, in the medical records as to what caused the seizure. There is also no indication as to whether claimant's seizure was related to his employment with respondent.

The evidence establishes claimant suffered an accidental injury that arose in the course of his employment, as it occurred while he was loading a truck. The only question is whether claimant's accidental injury arose out of his employment with respondent. See K.S.A. 1997 Supp. 44-501(a).

The Appeals Board has consistently held that neutral risks or unexplainable falls occurring in the course of an employee's employment, even though they have no particular employment or personal character, are compensable. Driscoll v. Cedar Vale Hospital, Inc., Docket No. 214,179 (July 1997); Davis v. Montgomery Ward, Docket No. 220,775 (September 1997). See also Larson's Workers' Compensation Law, § 10.31(a) (1998).

In following the majority rule as set out in Larson's, *supra*, the Appeals Board finds, for preliminary hearing purposes, that this neutral risk or unexplained fall is compensable.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated December 8, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 1999.

BOARD MEMBER

c: Donald G. Strole, Lawrence, KS
Wade A. Dorothy, Lenexa, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director